

Supreme Court, U. S.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. **76-79**

FREDERICK W. WOLF,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Eighth Circuit

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The Petitioner, Frederick W. Wolf, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above case on April 12, 1976.

OPINION BELOW

The petitioner, Frederick W. Wolf, was found guilty of the second of a two-count indictment alleging violation of 18 U.S.C. App. § 1202 (a)(1), on November 5, 1975 by the District Court

of the United States for the Eastern District of Missouri in Cause No. 75-200 Cr. Petitioner was sentenced to two years in the custody of the Attorney General and a \$5,000.00 fine. The case is reported at 405 F. Supp. 731 (E.D. Mo. 1975).

The United States Court of Appeals for the Eighth Circuit affirmed the conviction on May 21, 1976, in Cause No. 75-1960. The opinion of the Court of Appeals is not yet reported, but is included in Appendix A.

JURISDICTION

The judgment that is sought to be reviewed is the final order issued in the United States Court of Appeals for the Eighth Circuit, on May 21, 1976.

This Court has extended the time for filing this petition until July 20, 1976. Jurisdiction is invoked under 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

The issue presented for review in this Petition for Certiorari is:

1. Did the Trial Court err by permitting the uncorroborated statement of the petitioner to serve as the basis of the conviction of the petitioner of the offense of receiving a firearm and to prove that petitioner had received the firearm within the venue alleged?

STATEMENT

The petitioner was charged in a two-count indictment with violations of 18 U.S.C. App. § 1202 (a)(1). Both offenses were

alleged to have been committed in the Eastern District of Missouri on or about March 16, 1975. The petitioner had been convicted of three felonies prior to this time.

The first count charged that the petitioner, who had previously been convicted of a felony, unlawfully received a certain .22 caliber Derringer pistol which had been shipped in interstate commerce from Connecticut to the Eastern District of Missouri. The petitioner was found not guilty on Count I since the court found no evidence to show that the weapon had been received within the period required by the Statute of Limitations.

The second count charged an unlawful receipt by the petitioner of a .38 caliber Smith & Wesson revolver. This weapon was stolen in Fort Smith, Arkansas, and subsequently found in the Eastern District of Missouri. Since the revolver had been stolen within the statutory period the statute of limitations was not a bar and the petitioner was found guilty. This Petition for Writ of Certiorari deals only with Count II.

The revolver was found at the petitioner's home at 6201 Tilden Street, in St. Louis, Missouri where he lived with a female friend. Members of the St. Louis Police Department had been informed, prior to March 16, 1975, that certain stolen property was at that address, although petitioner has never been prosecuted for any offense in connection with such alleged property.

On March 16, 1976, police officers were executing a search warrant at that address when according to their testimony they observed the two weapons mentioned in the indictment in "plain view" of the officers. When the petitioner was asked how he obtained the weapon specifically mentioned in Count II, he stated that he purchased it from a black man in St. Louis, Missouri. That statement was the only evidence produced by the government at trial which tended to show receipt by the petitioner of the weapon in the Eastern District of Missouri.

REASONS FOR GRANTING THE WRIT

English and American courts have long been wary of convicting a person only on the basis of his own confession, without any corroborating evidence. American courts have only on rare occasions provided a lucid rationale for this *corpus delicti* rule. It has been suggested that the rule is accepted due to "the general distrust of confessions which permeates the thinking of many courts, coupled with the extreme difficulty that the defendant would have disproving his confession once it had been introduced in evidence." Note, *Proof of the Corpus Delicti Alicende The Defendant's Confession*, 103 U. Pa. L. Rev. 638, 642-3 (1955). The result of these feelings is that "a defendant cannot be convicted solely on the basis of his own confession." Wright, *Federal Practice and Procedure*, § 414 at 165-6 (1969). The general rule that "an accused may not be convicted on his own uncorroborated confession" has been recognized by the United States Supreme Court. *Smith v. United States*, 348 U.S. 147, 152 (1954).

In the instant case, it is just such an uncorroborated statement by the petitioner which caused his conviction. The government has failed to offer any corroborating evidence that the appellant received the weapon (the offense for which he is charged) in the Eastern District of Missouri other than his statement that he purchased the weapon in St. Louis, Missouri. The statement alone it is submitted is not enough.

The acceptance of this sort of uncorroborated statements can have serious ramifications for our system of criminal justice. The failure to corroborate may unjustly convict one who, under the pressure of investigation, spoke "words (reflecting) the strain and confusion attending his predicament rather than a clear reflection of his past." *Smith v. United States*, *supra* at 153. An accused may actively, or even passively, be coerced into making

an involuntary statement, and then be unable to establish its involuntary nature. Some cases exist in which false confessions were voluntarily made, resulting in convictions, as there had been no corroboration. Note, *Voluntary False Confessions: A Neglected Area in Criminal Administration*, 28 Ind. L.J. 374 (1953). Another possibility in which an uncorroborated confession might cause irreparable harm is the situation in which an innocent suspect, fearing conviction based on circumstantial evidence and without hope of acquittal, might confess in the hope of judicial leniency.

All of these are cogent reasons why the courts must show extreme care when dealing with confessions. Any of those hypotheticals could occur, and in the absence of evidence which corroborates one's confession, an unjust conviction might occur.

Despite the need for safeguards in this area, the Court of Appeals for the Eighth Circuit saw fit to accept the petitioner's statement without any corroborating evidence and to use it as the only implement in affirming the conviction. It is true that possession of a weapon infers previous receipt of that weapon. See *United States v. Haley*, 500 F. 2d 302 (8th Cir. 1974). But it does not follow from that inference that the place of receipt is identical to the place of possession. Moreover, in the instant case, the mere fact that the weapon was found in the house does not establish even "possession" by petitioner since another party had joint possession and control of the home.

Yet this is a fiction which the government would have this Court accept. Its acceptance creates two problems, each of which require that the Court of Appeals' decision be reversed.

The first problem is that the fiction creates the idea that the government has met "the additional burden of proving the receipt of the firearm in the district where the prosecution takes place." *United States v. Kelly*, 519 F. 2d 251, 254 (8th Cir. 1975). Nothing could be further from the truth. The inference

that the place of reception is the same as that of possession is clearly rebuttable, and it is a fact that the government did not submit any evidence, other than the petitioner's statement, which even remotely suggests that the weapon was received in the Eastern District of Missouri.

The facts of *Haley* which gave use to the inference of that case can be distinguished from the facts herein. There, a weapon was shipped to, stolen in, and found in the possession of Haley in the Western District of Missouri. Here, the evidence is indisputable that the weapon was stolen in Arkansas. Thus, there is a key difference in the foundations upon which the inferences might be built. There simply is no evidence which corroborates the statement of the petitioner once the inference of the government is closely examined and the gap in its logic is recognized. And in such a situation as is now before this Court, "a criminal conviction cannot be sustained when the offense is proven solely by the uncorroborated extra-judicial confession or admissions of the accused." *United States v. Henderson*, 467 F. 2d 904, 906 (10th Cir. 1972). There must be "substantial independent evidence from which the jury may find the accused guilty beyond a reasonable doubt." *United States v. Khandjian*, 489 F. 2d 133, 139 (5th Cir. 1974).

The destruction of the fiction that the place of possession is the same as the place of receipt points out the second problem in this case. Without corroborating evidence supporting the petitioner's statement, the government has failed to carry its burden with respect to venue. Rule 18 of the Federal Rules of Criminal Procedure requires that, unless an exception exists, venue is to be in the district in which the criminal activity occurred.

In *United States v. Mancino*, 474 F. 2d 1240, 1241 (8th Cir. 1973), the court approved the trial court's instruction to the jury that an essential element of an 18 U.S.C. App. § 1202(a) (1) offense is "that the defendant at the time and place charged in each count of the indictment, received a firearm . . ."

No citation is needed to support the proposition that each element of a crime must be proven beyond a reasonable doubt. The fact is that the government has no evidence whatsoever independent of the petitioner's statement which gives any inkling as to the place in which the weapon was received by the petitioner. The venue of a federal district court "in criminal cases depend(s) on some part of the criminal activity having occurred within its territory." *United States v. Luton*, 486 F.2d 1021, 1022 (5th Cir. 1973). Now conceding that the court's standard of proof is more relaxed with respect to venue than it is to other elements of a crime, the fact remains that venue must be proved at every trial. In this case, venue was not proven.

The only evidence offered by the government in this case concerning the receipt of the weapon by the petitioner was the petitioner's own statement that he bought the weapon in St. Louis, Missouri. There is no other evidence which corroborates this statement. *Smith v. United States*, *supra*, holds that such a naked statement cannot be the basis of a conviction. Furthermore, the government's failure to show by independent evidence the place of receipt of the weapon by the petitioner means that venue has not been established. It is fundamental law that prosecution take place in the district of the criminal activity. Failure by this Court to hear the issues raised by this case will chip away at these two procedural safeguards.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

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APPENDIX

APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 75-1960

United States of America,

v.

Frederick W. Wolf,

Appellee,

Appellant.

} Appeal from the
United States Dis-
trict Court for the
Eastern District of
Missouri.

Submitted: April 12, 1976

Filed: May 21, 1976

Before Ross, Stephenson and Henley, Circuit Judges.

Per Curiam.

Frederick W. Wolf, defendant below, was charged in a two-count indictment with violations of § 1202(a)(1) of 18 U.S.C., Appendix; both offenses were alleged to have been committed in the Eastern District of Missouri on or about March 16, 1975. The first count charged that the defendant, having been previously convicted of a felony, unlawfully received a certain .22 caliber Derringer pistol which had been shipped in interstate

commerce from Connecticut into the Eastern District of Missouri. The second count charged an unlawful receipt of a .38 caliber Smith & Wesson revolver that had been stolen in Fort Smith, Arkansas, and thereafter transported into the Eastern District of Missouri.

The defendant pleaded not guilty and was tried to the district court¹ sitting without a jury. At the conclusion of the government's case the defendant moved for a judgment of acquittal; that motion was denied. Defendant elected to rest with the government and renewed his motion.

On November 5, 1975 the district court filed a memorandum opinion dealing with the questions presented by the record.

The defendant was found not guilty on Count I, there being no evidence to prove that the Derringer had been brought into the Eastern District of Missouri or received in that district by the defendant within the statutory period of limitations. See *United States v. Steeves*, 525 F.2d 33, 39-40 (8th Cir. 1975).

The defendant was found guilty on Count II, and he appeals alleging insufficiency of the evidence to convict. We affirm.

The evidence established that the .38 caliber revolver was stolen in Fort Smith, Arkansas from Dansby Council in March, 1973. On March 16, 1975 members of the St. Louis Police Department obtained a warrant authorizing a search for stolen merchandise in the home of the defendant located at 6201 Tilden Street. While executing the warrant the officers observed the two weapons mentioned in the indictment. Asked about how he acquired the weapon referred to in Count II the defendant replied that he had purchased the weapon from a black man on the streets of St. Louis. Over a period extending from September 8, 1958 to August 3, 1965 defendant had been convicted of at least three felonies.

¹ The Honorable James H. Meredith, Chief Judge, United States District Court for the Eastern District of Missouri.

At the trial of the case it was incumbent on the government to prove that the defendant had received the .38 caliber revolver in the Eastern District of Missouri and not elsewhere. *United States v. Haley*, 500 F.2d 302 (8th Cir. 1975). Since the defendant was not a manufacturer of firearms, he obviously "received" the weapon from someone, in some manner, and at some place. *United States v. Kelly*, 519 F.2d 251 (8th Cir. 1975).

While it was obvious that the weapon, which was stolen in Arkansas in 1973 and which was found in defendant's home in St. Louis in 1975, came into the Eastern District of Missouri at some time after the theft, the only positive evidence that the defendant received the gun in that district was his own declaration that he had purchased the gun in St. Louis.

For reversal, the defendant contends that it was incumbent on the government to corroborate that declaration by independent evidence, and that it failed to do so. We disagree.

The corpus delicti of the offense charged in Count II was the unlawful receipt of the weapon by the defendant. The place at which defendant received the gun was relevant only to the question of venue. While the government was required to prove venue, it was not required to do so by independent evidence beyond a reasonable doubt, and it could rely on circumstantial evidence together with the declaration of the defendant. *United States v. Haley, supra*.

It is quite true that the defendant could not be convicted on the basis of nothing but an uncorroborated confession or admission. *Smith v. United States*, 348 U.S. 147 (1954); *Oppen v. United States*, 348 U.S. 84 (1954); *United States v. Kitzman*, 520 F.2d 1400, 1404 (8th Cir. 1975). However, in a case of this kind it is sufficient if the government's independent evidence tends to establish the trustworthiness of the confession or ad-

mission. Of course, the whole body of the evidence, including the statement in question, must be sufficient to convict. *Opper v. United States, supra*, 348 U.S. at 93; *Smith v. United States, supra*, 348 U.S. at 156.

Assuming arguendo that the government cannot prove venue, as such, merely by showing that the defendant admitted receipt of the gun at a particular place, we are satisfied that here defendant's statement as to where he obtained the gun was adequately corroborated.

There was nothing unusual or inherently untrustworthy in the statement; it was made voluntarily; it was exculpatory at the time it was made, and it provided a reasonable explanation of defendant's acquisition of the weapon. The defendant was not a transient; he was a resident of St. Louis, and the weapon was found in his home. Those facts tended to establish the trustworthiness of the declaration, and justified the district court in finding, among other things, that the defendant received the gun in the Eastern District of Missouri.

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

OCT 6 1976

MICHAEL RODAK, JR., CLERK

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FREDERICK W. WOLF, PETITIONER

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UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
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In the Supreme Court of the United States

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FREDERICK W. WOLF, PETITIONER

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UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that his conviction for unlawful receipt of a firearm was based on legally insufficient evidence because receipt and venue were allegedly established solely by an uncorroborated admission.

After a non-jury trial in the United States District Court for the Eastern District of Missouri, petitioner, a previously convicted felon, was convicted of receiving a .38 caliber Smith & Wesson revolver that had been transported in interstate commerce, in violation of 18 U.S.C. App. 1202(a). He was sentenced to two years' imprisonment and a \$5,000 fine. The court of appeals affirmed (Pet. App. A; 535 F. 2d 476).

1. The undisputed evidence showed that on March 16, 1975, during a search of petitioner's residence pursuant to a warrant, St. Louis police officers found several firearms (Tr. 19, 22-23, 29, 48-49, 63-64). Petitioner

was advised of his *Miranda* rights and then admitted that the weapons were his (Tr. 20, 23, 48-49). A woman who lived with petitioner thereupon exclaimed (Tr. 49): "You can't claim those weapons, you'll get in trouble with them. They're mine." Petitioner then told the officers that he was a convicted felon (Tr. 23).

Petitioner was arrested and taken to the police station, where he was again advised of his rights. A check of the serial numbers of the firearms revealed that one of them,¹ the .38 caliber Smith & Wesson revolver at issue here, had been reported stolen (Tr. 25-26, 52). When the officers informed petitioner that the firearm had been stolen, he replied (Tr. 27-29, 43): "I bought that gun from a [man] here in St. Louis on the street."

At trial, the government established that between 1953 and 1965 petitioner had been thrice convicted of felonies: twice of burglary and once of murder (G. Ex. 1). The owner of the Smith & Wesson revolver testified that it had been stolen from his home in Arkansas on March 10, 1973 (Tr. 69-72).

2. The offense of which petitioner has been convicted has three elements: (1) receipt of a firearm, (2) in or affecting interstate commerce, (3) by a person who has previously been convicted of a felony (18 U.S.C. App. 1202(a)). Petitioner makes no claim regarding the latter two elements (there was ample evidence of both, see text, *supra*). He does assert, however, that there was no independent or corroborative evidence of his

¹Unlawful receipt of a second firearm, a .22 caliber Derringer pistol, was also charged in the indictment, but the district court ruled that the government's case failed to prove that the receipt had taken place within the five year statutory period of limitations (18 U.S.C. 3282), and it accordingly acquitted petitioner on that charge (405 F. Supp. 731).

admission that he received the firearm and that he received it in the Eastern District of Missouri. This assertion is belied by the record.

The "corroboration rule" requires that "[a]ll elements of the offense must be established by independent evidence or corroborated admissions" (*Smith v. United States*, 348 U.S. 147, 156). As to the receipt element of the crime in this case, the government's eyewitness testimony that petitioner possessed the firearm in his home in St. Louis constituted ample independent evidence corroborating petitioner's admission that he received the firearm (*United States v. Brown*, 472 F. 2d 1181, 1182 (C.A. 6)).

Assuming that the "corroboration rule" applies to proof of venue,² this same testimony also tended independently to show receipt in the Eastern District of Missouri and thus corroborated petitioner's admission of that fact. Petitioner's admission that he bought the firearm in St. Louis was therefore properly considered evidence both of his having received the firearm and of his having received it in the Eastern District of Missouri.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1976.

²The corroboration rule is premised on a concern that a defendant's own confession, without more, is insufficiently reliable evidence upon which to base a conviction. *Smith v. United States*, *supra*, 348 U.S. at 152-153. This concern is inapplicable to proof of venue, which is not an element of the offense necessary to be proved beyond a reasonable doubt (as petitioner concedes, Pet. 7), but a geographical limitation (albeit of constitutional dimension, see United States Constitution, Sixth Amendment) on the power of individual district courts to adjudicate controversies within the jurisdiction of the federal courts.